

**REMARKS/ARGUMENTS**

Claims 1 and 3 are present in this application.

With regard to the Information Disclosure Statement filed May 4, 2005, Applicant's representative has confirmed that the English-language translation of the Office Action from a corresponding Japanese patent application is indeed available in PAIR. Referencing the document list in PAIR, there are four (4) documents listed as filed on May 4, 2005. The fourth listed document is entitled "NPL Documents," which is the noted translated Office Action. If the Examiner has difficulty locating this document in PAIR, the Examiner is invited to contact Applicant's representative for assistance. Prompt consideration of the Information Disclosure Statement filed May 4, 2005 is respectfully requested.

Claim 1 was rejected under 35 U.S.C. §103(a) over U.S. Patent No. 6,138,868 to Yuyama in view of U.S. Patent No. 488,084 to Miner. This rejection is respectfully traversed.

The Office Action recognizes that Yuyama lacks an auxiliary plate mounted on one side of a lifting plate such that the auxiliary plate is slidable up and down relative to the lifting plate. The Office Action contends, however, that it would have been obvious to modify the teachings of Yuyama to include an auxiliary plate as taught by Miner. Plates C and D in Miner, however, do not correspond to the auxiliary plate and the lifting plate of the claimed invention. As defined in claim 1, the lifting plate is driven up and down by the drive source. The auxiliary plate is mounted on one side of and adjacent the lifting plate and is slidable up and down relative to the lifting plate. The lifting plate has a top end with a tapered surface having a space to place only one specimen container and descending toward an outside of the container storing box. The auxiliary plate has a top end with a tapered surface that also descends toward an outside of the container storing box. The lifting plate and the auxiliary plate are constructed such that the top

end of the auxiliary plate is flush with that of the lifting plate when the lifting plate descends and is located at a lower level than that of the lifting plate when the lifting plate ascends.

From this structure, it is apparent that the auxiliary plate, which is slidable up and down relative to the lifting plate, is slid up and down in accordance with movement of the lifting plate, which is driven by the drive source. The auxiliary plate is slid up and down when the lifting plate is slide up and down in the same direction.

In Miner, the plates C and D are respectively driven in opposite directions. As the slide C rises, the slide D descends, and when they have been carried to the position illustrated in Fig. 3, the blanks on the inclined end f of slide C will roll off and onto the inclined ends g of slide D (see, for example, page 1, lines 54-57).

Miner thus fails to teach an auxiliary plate mounted on one side of and adjacent a lifting plate that is slidable up and down relative to the lifting plate, and the lifting plate and the auxiliary plate that are constructed such that the top end of the auxiliary plate is flush with that of the lifting plate when the lifting plate descends and is located in a lower level than that of the lifting plate when the lifting plate ascends.

On page 10 of the Office Action, the Examiner contends that “[o]nly structural language is determinative of the metes and bounds of a patent claim.” This statement, however, is a mischaracterization of U.S. patent law. It is well settled that a patent applicant is free to recite features of an apparatus either structurally or functionally. See, *In re Schreiber*, 44 USPQ 2d 1429, 1432 (Fed. Cir. 1997). See also, *In re Swinehart*, 439 F.2d 210, 212, 169 USPQ 226, 228 (CCPA 1971) (“[T]here is nothing intrinsically wrong with [defining something by what it does rather than what it is] in drafting patent claims.”); and *K 2 Corp. v. Salomon S.A.*, 191 F.3d 1356, 52 USPQ2d 1001, 1004 (Fed. Cir. 1999) (citing *Wright Med. Tech., Inc. v. Osteonics Corp.*, 122

F.3d 1440, 43 USPQ2d 1837, 1840 (Fed. Cir. 1997)) ("The functional language is, of course, an additional limitation in the claim."). The Examiner's dismissal of purported functional language is thus improper.

Moreover, the Examiner's characterization of the operation of auxiliary plate C and lifting plate D in the Miner patent directly contrasts the specific disclosure in the Miner patent. See, in particular, page 1, lines 52-53 ("As the slide C rises, the slide D descends . . ."). In contrast, as defined in claim 1, as the lifting plate descends, the top end of the auxiliary plate is flush with the lifting plate. At a minimum, claim 1 thus requires *structure* capable of carrying out the defined operation, which structure is lacking in Yuyama and Miner, taken singly or in combination.

Reconsideration and withdrawal of the rejection are thus respectfully requested.

Claim 3 was rejected under 35 U.S.C. §103(a) over Yuyama in view of Miner and U.S. Patent No. 4,567,997 to Portyansky. The Portyansky patent, however, does not correct the deficiencies noted above with regard to Yuyama and Miner. As such, Applicant submits that dependent claim 3 is allowable at least by virtue of its dependency on an allowable independent claim. Withdrawal of the rejection is requested.

Claim 1 was rejected under 35 U.S.C. §103(a) over Japanese Patent Publication 2002-306952 to Ishizuka. This rejection is respectfully traversed.

The Office Action contends that Ishizuka teaches a lifting plate 22 and an auxiliary plate 21. As shown in Figs. 4A-4D, however, the lifting plate 22 and the auxiliary plate 21 are respectively driven in opposite directions. The auxiliary plate 21 is moved downwardly and the lifting plate 22 is moved upwardly to place tablets D on the tapered plate 21a of the auxiliary plate 21, as shown in Fig. 4B. Subsequently, the auxiliary plate 21 is moved upwardly and the

lifting plate 22 is moved downwardly to place tablets D on the tapered plate 22a of the lifting plate 22, as shown in Fig. 4C. The noted upward/downward movement of the lifting plate 22 and the auxiliary plate 21 is repeated. As such, Ishizuka lacks at least the claimed auxiliary plate defined in claim 1.

Reconsideration and withdrawal of the rejection are respectfully requested.

Claim 3 was rejected under 35 U.S.C. §103(a) over Ishizuka in view of Portyansky. Portyansky, however, does not correct the deficiencies noted above with regard to Ishizuka. As such, Applicant submits that claim 3 is allowable at least by virtue of its dependency on an allowable independent claim. Withdrawal of the rejection is requested.

In view of the foregoing remarks, Applicant respectfully submits that the claims are patentable over the art of record and that the application is in condition for allowance. Should the Examiner believe that anything further is desirable in order to place the application in condition for allowance, the Examiner is invited to contact Applicant's undersigned attorney at the telephone number listed below.

Prompt passage to issuance is earnestly solicited.

Respectfully submitted,

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